

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILTSE, Minors.

UNPUBLISHED

April 17, 2014

Nos. 318374; 318375
St. Joseph Circuit Court
Family Division
LC No. 2012-000555-NA

Before: HOEKSTRA, P.J., and SAWYER and GLEICHER, JJ.

PER CURIAM.

In Docket Nos. 318374 and 318375, respondents appeal as of right the order terminating their parental rights to the minor children BW and RW under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to parent). Because we conclude that the trial court did not clearly err by finding at least one statutory ground for termination was proved by clear and convincing evidence or by finding that termination was in the best interests of the children, we affirm.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009) (quotation marks and citation omitted).

Respondents filed a joint brief on appeal and first argue that the trial court erred by concluding that at least one statutory ground was proved by clear and convincing evidence. Specifically, respondents argue that both mother and father showed significant progress late in the proceedings and they should have been given more time to demonstrate that the changes were permanent. Further, respondents maintain that they would have made more progress if the Department of Human Services (DHS) would have required couples counseling earlier. Respondents maintain that these facts demonstrate that the trial court should not have concluded that any of the alleged three statutory grounds were proved by clear and convincing evidence.

In this case, respondent’s parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We conclude that the trial court did not clearly err by finding that petitioner established, by clear and convincing evidence, at least one statutory ground for

termination of both respondents' parental rights. Under MCL 712A.19b(3)(c)(i), termination is proper when the "conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."

In this case, the children were removed from respondents' care because respondents could not provide them proper care, specifically because of the domestic violence between respondents and respondents' unstable housing situation. The record supports the trial court's conclusion that these conditions continued to exist. The record shows that respondents remained unwilling or unable to provide proper care for the minor children throughout the majority of the proceedings. First, respondents have a lengthy history of continued instability in housing and employment. When BW entered care in July 2012, respondents were ordered to obtain and maintain stable employment and housing. However, respondents continued to lack stable housing and consistent income when RW entered care in December 2012. In June 2013, respondent-mother acquired housing after qualifying for a grant that paid the first three months of her rent. Respondent-father moved in with her after he was released from incarceration in July 2013. At the time of the August 2013 termination hearing, respondent-father had been consistently employed for less than four months. Respondent-mother acquired employment the month before the termination hearing. At the time of termination, neither respondent had demonstrated an ability to pay rent after the grant expired. Further, respondent-mother's lease expired on September 1, 2013, at which point the landlord could decide whether the tenancy would continue on a month-to-month basis. Thus, by failing to acquire stable housing and demonstrate that they could maintain employment for a prolonged period of time, respondents failed to establish that they would be able to provide "the most rudimentary care the children needed." See *In re CR*, 250 Mich App 185, 196; 646 NW2d 506 (2002). Second, respondents were not involved in RW's physical therapy and medical appointments, and as a result, they were unable to care for his special needs at the time of termination. Respondents also missed about 20 percent of their parenting time appointments.

The record also established that respondents had a history of domestic violence that they failed to address during the proceedings. Less than one month after BW was taken into care, respondent-father was charged with two counts of domestic violence. He later pled guilty to one count of assault and battery and was sentenced to 87 days in jail during the proceeding. Respondent-mother claimed to have ended her relationship with respondent-father at one point during the proceedings; however, she frequently visited him in jail and when a foster care worker made an unannounced visit to respondent-mother's apartment she discovered that respondent-father was living there. After that, respondents admitted that they had reunited. In May 2013, respondent-mother participated in three domestic violence counseling sessions; however, the record supports the conclusion that she received no benefit. She failed to attend individual counseling in June and July 2013. Although respondent-father could have participated in counseling during the time that he was incarcerated, he failed to do so. After the termination petition was filed, respondents attended two joint counseling sessions in July 2013. Less than one month before termination, the therapist reported that, although respondents were capable of change, he did not believe that they were committed to taking the necessary steps. During the 13-month proceedings, respondents did not discontinue their relationship and failed to admit to their history of domestic violence. Although respondents acknowledged at the termination

hearing that they required more counseling, neither directly addressed their history of domestic violence.

Thus, we conclude that the record supports the trial court's conclusion that "the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age," given the fact that respondents failed to address their history of domestic violence during the proceeding and while respondents had secured employment and a home by the end of the proceedings, it was not clear that respondents would be able to continue living in their current home.

Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *Id.* at 461. Nevertheless, we have reviewed these grounds and conclude that, for the same reasons, termination of respondents' parental rights was also appropriate under MCL 712A.19b(g) and (j). Respondents' ongoing problem with domestic violence prevents them from providing proper care or custody for the minor children, and respondents' lack of progress in the area shows that there is no reasonable expectation that respondents will be able to provide proper care or custody within a reasonable time. MCL 712A.19b(g). Moreover, it is likely the minor children would be harmed if returned to respondents' care because of the domestic violence and unstable living environment. MCL 712A.19b(j). Testimony during the termination hearing supported the conclusion that even if no violence was directed at the children, the children could be "traumatized" if exposed to domestic violence.

While respondents argue that they would have been able to rectify the conditions leading to adjudication and provide proper care and custody if given additional time, the record clearly establishes that there was "no reasonable expectation that the parent[s] [would] be able to provide proper care and custody within a reasonable time considering" the ages of the children. MCL 712A.19b(3)(g). Respondents showed a lack of commitment to the children during a majority of the proceeding and only made improvement in the months leading up to termination. They completely failed to address their history of domestic violence, and the record supports that respondent-mother put her relationship with respondent-father before her children's best interests. The children had been out of respondents' care for a substantial portion of their lives. At the time of termination, two-year-old BW had been in care for 13 months, and nine-month-old RW had been in care for eight months. The children required permanency because of their young age and the potential of confusion regarding the identity of their primary caregiver. Contrary to respondents' arguments on appeal that the children would not be harmed if they were given additional time to demonstrate improvement, the record supports that the children could be emotionally harmed if left in "limbo" for an extended period of time. The trial court's finding that termination of both respondents' parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App at 459.

In reaching our conclusion, we reject respondents' argument that termination of their parental rights to the children was attributable to deficient efforts by petitioner. Specifically, that respondents were not able to rectify the concerns surrounding their history of domestic violence because petitioner failed to refer them to couples counseling until April 2013. "When a child is removed from a parent's custody, the agency charged with the care of the child is required to

report to the trial court the efforts made to rectify the conditions that led to the removal of the child.” *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). “While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [the parents] to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

The record establishes that respondent-father qualified for mental health services through Community Mental Health (CMH). In November 2012, his therapist told the caseworker that he would be able to provide respondents with couples counseling. Respondent-father failed to attend therapy sessions in October 2012 and did not begin counseling until January 2013. He only attended three counseling sessions between January 2013 and March 2013. It was not until March 2013 that respondent-father informed the caseworker that CMH could not provide couples counseling. In April 2013, petitioner referred respondents to a different agency so that they could attend couples counseling. Accordingly, the delay in respondents beginning couples counseling was the result of respondent-father’s delay in beginning counseling at CMH and the fact that he did not inform the caseworker until March 2013 that CMH could not provide couples counseling. See *id.* Further, given that respondents failed to address their history of domestic violence after they attended couples counseling in the months leading up to termination, there is no indication that they would have seriously invested in counseling if it had been provided earlier in the proceeding. Thus, we conclude that the trial court did not clearly err by finding that petitioner established, by clear and convincing evidence, at least one statutory ground for termination of both respondents’ parental rights.

Respondents also argue that termination of their parental rights was not in the minor children’s best interests. In particular, respondents argue that in light of the significant progress that was made toward the end of the proceedings, it was in the best interests of the children to give respondents more time.

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). We review a trial court’s finding that termination is in the child’s best interests for clear error. *In re HRC*, 286 Mich App at 459. In *In re VanDalen*, 293 Mich App at 141, when reviewing best interests, this Court looked at evidence that the children were not safe with the parents, were thriving in foster care, and that the foster care home could provide stability and permanency. A trial court may also consider whether the parent has a healthy bond with the children when determining best interests. *In re CR*, 250 Mich App at 196-197.

Here, while the record supports that the children enjoyed spending time with respondents, it further supports that the children did not have a healthy parent-child bond with them. Two-year-old BW had been in the care of his maternal grandmother for over half of his life at the time of termination. The record supports that BW viewed respondents to be “fun” playmates, not his primary caregivers. Further, at the time of termination, RW had never been in respondents’ care. Because of their lack of involvement in his medical and therapy appointments, they did not know how to care for his special needs. It was uncertain whether RW viewed respondents as caregivers. *Id.*

Although respondents argue on appeal that they should have been provided additional time to complete therapy and demonstrate that they were able to maintain housing and employment, we focus on the children when determining best interests. This includes considering the children's need for stability and permanency. *In re VanDalen*, 293 Mich App at 141. There is no evidence of record to show that respondents would have been able to parent the children within a reasonable time. Both children had special needs when they entered care. The record supports that they were "doing wonderful" and improving in their placement. The children were bonded to their maternal grandmother, and she and her husband were interested in adopting the children. Importantly, at the time of termination, BW had lived with his grandmother for over half of his life and it was the only home that RW had ever known. Accordingly, the fact that the "children had been placed in a stable home where they were . . . progressing and that could provide them continued stability and permanency" supports that termination was in the children's best interests. See *id.* at 141-142. On this record, we affirm the trial court's ruling that terminating respondents' parental rights was in the children's best interest. The trial court it did not clearly err. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Elizabeth L. Gleicher